

Planning Commission

Regular Meeting of July 17, 2013

A regular meeting of the Planning Commission was called to order by Chairman Nichols at 7:00 p.m., Wednesday, July 17, 2013, in the City Council Chambers, 25541 Barton Road, Loma Linda, California.

Commissioners Present: John Nichols, Chairman
Miguel Rojas, Vice Chairman
Nikan Khatibi
Carolyn Palmieri

Commissioners Absent: Fred Khosrowabadi

Staff Present: Konrad Bolowich, Assistant City Manager
Guillermo Arreola, Associate Planner
James Gray, Fire Marshal
Gilbert Garza, Code Compliance/Animal Control Officer
John VanDorn, Contract Code Enforcement Officer
Richard Holdaway, City Attorney

Chairman Nichols led the Pledge of Allegiance. No items were added or deleted; no public participation comments were offered upon invitation of the Chairman.

PC-13-14 – Consideration of adoption of Administrative Hearing Procedures for Nuisance Abatement and Other Code Enforcement Proceedings

Assistant City Manager Bolowich presented the staff report indicating the Loma Linda Municipal Code required adoption of the procedures for conduct of nuisance abatement proceedings be in place. Staff developed the Administrative Hearing Procedures for Nuisance Abatement and other Code Enforcement Proceedings outlined in Exhibit A to the staff report for the Commission this evening. Nuisance hearings are considered public hearings; therefore the recommended procedures follow those same guidelines.

City Attorney Holdaway added that the recommended procedures reflect not only the City's Municipal Code Procedures, but also the general principals of common law due process. An administrative nuisance hearing is not a criminal action, is not a civil trial, the formal rules of evidence do not apply; it is an informal proceeding, subject to reasonable due process.

Chairman Nichols commented and Assistant City Manager Bolowich confirmed that pursuant to City Council action, the Planning Commission was appointed as the hearing board for these types of nuisance abatement issues and would be acting as a hearing board to fulfill that role.

Mr. Leland Lubinsky addressed the Commission, indicating that he had asked for the hearing and has the following concerns:

- He was not timely provided the written procedures for this hearing process; was told by staff that Robert's Rules of Order and City codes would apply; however, City codes did not provide procedures for the hearing and thus ensuring due process;
- Robert's Rule of Order indicate at the first organization meeting, when it comes to adopting the written procedures as those before the Commission this evening, that the Commission appoint a committee that will then seek out information needed and report back at the next meeting; cannot at the same meeting do both. If Commission chose not to use and follow Robert's Rules of Order, he had no objection;
- The California Code indicates that a lawyer cannot be an investigator and an adjudicator. City Attorney Holdaway worked on the investigation team and has also advised staff and the Commission on the matter. There should be independent legal counsel.

City Attorney Holdaway responded, pointing out that:

- Neither City Council nor the Planning Commission has formally adopted Robert's Rules of Order or any version thereof; neither is the Planning Commission acting tonight as a Hearing Board bound by Robert's Rules of Order. Robert's Rules of Order may be referred to generically as a guideline for some procedural aspects such as how to make a motion, but is not a procedural requirement. This is an informal administrative hearing and the procedures proposed by staff are a summary of the City's Municipal Code, along with some basic rules of due process that apply to any such administrative hearing.

- The Administrative Procedures Act does not directly apply to this proceeding. The Planning Commission is not a state agency and therefore not mandated to follow “the Administrative Procedures Act”. They are not a judicial body; however they are acting in a quasi-judicial capacity which does impose certain due process requirements as discussed previously and outlined in the procedures set forth in Exhibit A to the staff report.
- Mr. Holdaway indicated that he is not acting as a prosecutor nor as a judicial officer in this case, he was here to advise the Chairman and the Commission as to procedural matters; he will not be presenting the case on behalf of the City, nor arguing the case for or against a finding of a nuisance. His role was limited to the procedural aspects and general guidance typically given at any Planning Commission proceeding. If the City felt it necessary to have a prosecutor, an independent attorney could be brought in to fill that role.

Upon questions from the Commission as to his objections to the procedures, Mr. Lubinsky responded that his major objections were that he was not timely provided with the written procedures prior to this hearing and, in his opinion, the City Attorney was acting as investigator and adjudicator.

City Attorney Holdaway responded that Mr. Lubinsky was advised as to his due process rights prior to this evening; that he would be entitled to present briefs, evidence, arguments, and to be represented by counsel if he chose; the procedures set forth here were posted on the internet and Mr. Lubinsky received the same staff report before the Commission tonight this past Monday morning.

Motion by Palmieri, seconded by Khatibi and carried to adopt the Administrative Hearing Procedures for Nuisance Abatement and Other Code Enforcement Proceedings as outlined in Exhibit A to the staff report and as recommended by staff. Khosrowabadi absent.

PC-13-15 – Precise Plan Of Design (PPD) No. 13-07, Tentative Parcel Map 13-32 (No. 19452), Variance No. 13-067 – A request to develop an 87-Unit Apartment Project for property at 25259-25303 Van Leuvan Street, located in the R-3 High Density Zone. The project includes a request for a Variance to reduce to the rear yard setback requirement and allow a wall that exceeds 6-feet in height along the rear property line and a request to consolidate seven parcels into one parcel. The property has a General Plan Land Use Designation of Very High Density Residential (0-20 Du/Ac) and is located in the R-3 High Density Zone. Public Hearing

Chairman Nichols noted that Staff and applicant were requesting a continuance to August 7, 2013. He opened the public hearing and invited those in attendance not able to attend on August 7 to speak. There were no comments offered by the public.

Motion by Khatibi, seconded by Palmieri and carried to continue the Public Hearing to August 7, 2013. Khosrowabadi absent.

PC-13-16 – Public Nuisance – A Hearing to determine if a Public Nuisance exists at APN 0281-091-22 (24800 Redlands Blvd), APN 0281-091-32 (24816 Redlands Blvd), and APN 0281-091-40 (24818 Redlands Blvd); and consideration of adoption of Written Findings and Notice To Abate. The properties are located in the Evc – General Commercial Zone

Chairman Nichols opened the public hearing.

Assistant City Manager Bolowich presented the staff report and indicated that the goal with code enforcement and nuisance abatement issues is to come to a resolution with the property owner, not create an issue for the Planning Commission. He continued, presenting the following summary:

- property location, on Redlands Boulevard, west of Anderson, comprised of 3 lots with a residence (existing, non-conforming use) in existence since the City was incorporated; a bookstore, retail outlet for book sales; a building to the west of the bookstore and an accessory building to the back;
- zoning – East Valley Corridor, General Commercial Zone;
- background/timeline as outlined in the staff report;
- photos as of 7/18/13 showing the perimeter of the property depicting dead/overgrown vegetation, dead palm fronds on palm trees, outside storage of building materials, electrical issues, unpermitted electrical work, meter box on side of accessory building with box open and visible wiring, unpermitted roofing, structural issues, abandoned tools, inoperable vehicle(s), and areas where efforts have been made by the property owner to make improvements;
- graffiti issues have been addressed by the city and the property owner;
- violations as noted in the staff report, nuisance violations per Loma Linda Municipal Code, Health & Safety Code violations per the Building Code, Zoning violations and California Fire Code violations;
- remediation requested as indicated in the staff report;
- staff recommendations to the Planning Commission as outlined in the staff report.

Planning Commissioners concerns/questions included:

- was there encroachment of vegetation onto the vacant lot;
- were the improvements noted by staff the only improvements made by the property owner;
- estimate of the cost to abate;
- with regard to the structural soundness of the various buildings, was this determination made from a perimeter inspection;
- percent of remodel or rebuild that would trigger all to be brought into code compliance.

Staff responded:

- not certain as to the encroachment onto adjacent property, there were no complaints from adjacent property owners;
- only improvements visible and substantial are those noted;
- no estimate of cost to abate;
- inspectors were allowed on the property on August 22, 2012, at which time buildings were inspected for structural soundness; if owner chooses to repair the buildings, an engineering report that determines buildings are safe and stable or that what actions taken will bring them to become safe and stable will be necessary;
- any remodel or improvements would need to be compliant with current codes, if not touching any existing building, there is not a need to bring it up to current code.

Chairman Nichols indicated that staff had provided its evidence and documentation. He then invited Mr. Lubinsky to address the Commission, indicating that the Commission would show all due respect to his testimony and rebuttals, but did ask that the proceedings stay focused on the issue before the Commission.

Leland Lubinsky, property owner, responded to staff's presentation, reviewed the photos and indicated:

- the accessory buildings were very old, however where electrical issues were noted there was no connection to electricity and there were no electrical meters on those buildings;
- upon questions regarding the existence of an engineering report regarding the structural soundness of the buildings, he indicated he had been provided a report by the insurance company after an accident, however he did not have that report nor had it been provided to staff; he plans to restore these accessory buildings which is why he maintains the roof; buildings are not rented out, nor can anyone obtain access, therefore there was no imminent danger to life;
- current photos shown by staff did not indicate dead vegetation, but instead was mulch; he hired Mowbry to provide the mulch; that Caltrans and SanBAG had dumped dead vegetation from the freeway off ramp project at the north end of his property;
- the outdoor storage was allowed under a cooperation agreement with the City Council, that cooperation agreement is ongoing, only the City Council could vote to terminate the agreement and have not; however the existence of a signed cooperation agreement has not been produced by either Mr. Lubinsky or the City;
- the dead tree was being repurposed as an arbor and was topped off so that it was not touching any structure;
- using some of the cast iron pieces as borders;
- the existing cooperation agreement indicated there was to be vegetative screening all around the property, the freeway off ramp project cut down any number of Eucalyptus trees which removed the vegetative screening that was there;
- has an issue with one of the Yucca's, the bottom is there, the top is there, the middle is not; it was stolen and there was a crime report taken;
- the report indicated that there was a supposed inoperative vehicle, vehicle is operable and is registered;
- one of the trees indicated by the City as dead was actually a summer deciduous tree, a California Buckeye.

Mr. Lubinsky presented his PowerPoint presentation depicting his garden green and in bloom; whether it is overgrown or not could be debated. He cleans the property of trash and debris from Del Taco and KFC daily.

Fire Marshal Gray responded:

- Contrary to Mr. Lubinsky's belief that any dead vegetation is mulch, mulch is solid wood that has been ground up; it does not actively burn like loose materials. It is agreed that Mr. Lubinsky in the last month has covered a number of areas on his property with freeway mulch.
- The City's Fire Prevention Bureau performs weed abatement inspections twice a year, late spring and in the fall when the fire danger is greatest. There is no need in the winter.
- The Fire Prevention Bureau has worked with Mr. Lubinsky extensively to make his property and the adjoining properties along Redlands Boulevard safer. If the ladder-type fuels such as the palm fronds found on his property were to catch fire, every other property along that area would be in danger.
- After an extensive search, the cooperation agreement referred to by Mr. Lubinsky has not been found nor has Mr. Lubinsky produced a copy.
- As to the structural soundness of the buildings, the City contracts with licensed building officials. Upon inspection of those buildings, there were noted copious amounts of exposed electrical wires and upon

evidence to the contrary, it is believed that those wires are energized. Three of the four buildings were deemed by the City's building official to be structurally unsound. While commending Mr. Lubinsky for the installation of a new roof on one of the buildings, the structural damage was still there.

- Mr. Gray did agree that one of the trees noted as dead was actually a summer deciduous tree.
- The weed abatement notices have a deadline; that deadline passed with no action taken.
- The City's contract building inspector and the Fire Prevention Bureau decisions are based on the California Building Code, California Fire Code and the 1997 Uniform Code for the Abatement of Dangerous Buildings, which have been adopted by the City. Relevant sections are noted on the violation notices.
- He agrees that while the building may not be rented or easily accessible, however, if those buildings catch fire, the firefighters responding would be aggressive, quite possibly attacking a fire from the roof and therefore easily injured or killed.

Discussion ensued regarding the extreme termite infestation as noted in the Code Enforcement Notice of Violation. Mr. Lubinsky insisted that the incumbent upon the City to prove the existence of such. Assistant City Manager Bolowich indicated that the violations before the Commission this evening referenced damage to the fascia boards and eaves that would be indicative of termite damage to the wood without invasive testing procedures.

In regards to the existence of a cooperation agreement between the City Council and Mr. Lubinsky, Mr. Bolowich pointed to Exhibit K to the staff report, a "Proposed 6-Month Mitigation Plan – Cooperation Agreement" to occur in 2 phases between March 1, 1993 to June 1, 1993 and June 1, 1993 to September 1, 1993. This is the only document on record with the City. If there was a final agreement, executed by City Council that can be produced that allows a specified continued amount of outdoor storage, the City would honor that agreement. Such an agreement has not been located in the City records nor has Mr. Lubinsky proved such to the City. Exhibit L to the staff report, the minutes from the Nuisance Hearings in 1992 and 1993, indicated that Mr. Lubinsky would obtain a Redevelopment grant to complete some cosmetic improvements that would include the replacement of the metal fence with horse fence and vines. Neither of those items was completed; no record exists that any grant was obtained; no funds were dispersed and as noted in the photos, the sheet metal fence still exists. The only impact of an ongoing cooperation agreement, if one could be produced, would be the amount of outdoor storage allowed; there would be no bearing on the dead vegetation, debris, dead trees, electrical, substandard buildings and other violations before the Commission in this hearing.

City Attorney Holdaway indicated that his former partner Mr. Demchuk attended the City Council meetings in 1992 and 1993, his comments appear in the minutes of June 8, 1993 and the proposed agreement was simply a list of things Mr. Lubinsky agreed to do, with no limitation on the City's ability to move forward with code enforcement proceedings in the future. The motion in 1993 was to not make a finding of a public nuisance at that time and to stop that proceeding. He pointed out the statement made by Mr. Demchuk wherein "he suggested the matter be dismissed without a finding being made and that the City Council reserve the right to make a finding in the future in case the situation required remedy. Lubinsky concurred and recognized that the allegation could be brought up again." It appears the cooperation agreement was a good faith listing of conditions Mr. Lubinsky agreed to remedy within that 6 month period of time.

Mr. Lubinsky disagreed, indicated there was a formal agreement that was signed and allowed a certain amount of continued outdoor storage. The City has maintained that a formal agreement does not exist and Mr. Lubinsky has not been able to produce a copy. He was uncertain as to the City's position now – that the outdoor storage is still a problem or he and the City would work together to find out what the agreement was regarding outdoor storage. Mr. Lubinsky indicated that his is a commercial property; he does maintain a business license and should be allowed a certain amount of outdoor storage.

Commissioner Khatibi indicated that his understanding thus far was that Mr. Lubinsky was willing to work with staff to mitigate the issues. He thanked Mr. Lubinsky for his presentation.

Mr. Lubinsky asked to reserve the right to submit any documents to the hearing board that might be needed, i.e. the report from the structural engineer and reiterated his objection to the hearing citing inadequate time to review the protocols and the City Attorney's role in the process.

Chairman Nichols indicated that both sides had presented their evidence to the Commission and it was up to the Commission to come to some conclusions and adopt some findings or continue the item. He indicated that he was on the City Council at the time of the nuisance hearing in 1992 and 1993 and does not recall a formal agreement resulting from that proceeding. It appears the ability for staff to access the site and more accurately access the severity of the items has not been made available; that moving forward and adopting the findings of a public nuisance would give staff the ability to more accurately make the determinations of remediation to the satisfaction of the Fire Marshal and Building Official.

Discussion ensued regarding the subjectivity language in the remediation recommendations. It was suggested to remove "to the satisfaction" language; that remediation would be up to code.

Discussion ensued regarding the time frame in which Mr. Lubinsky was to complete the remediation as recommended in the staff report. It was suggested that a phased-in time frame be established, i.e. 30 days for dead vegetation, trees and trash; 60 days to confirm there is no electrical service to the accessory building, any existing

service removed and obtain permits for electrical work already completed; 90 days to remove outdoor storage and construction materials; and 180 days to bring the buildings structurally into compliance or remove.

Mr. Lubinsky indicated that in regards to the three accessory buildings not connected to electricity, he was not in favor of bringing electrical up to code prior to a need for electricity; otherwise he was ok with a phased in time frame to complete the remediation. He did ask that the remediation recommended regarding outdoor storage be held in abeyance until such time as building commences on either of the neighboring vacant properties.

Staff responded that the outdoor storage, along with the dead vegetation present a fire hazard regardless of the status of the neighboring vacant properties.

No other testimony was offered by the City or Mr. Lubinsky, nor were any comments offered by the public. Chairman Nichols closed the hearing.

Motion by Rojas, seconded by Khatibi to adopt the finding that a public nuisance exists as outlined in the staff report and to adopt the staff recommendations with the amendments as to the phased-in time frame - 30 days for dead vegetation, trees and trash; 60 days to confirm there is no electrical service to the accessory building, any existing service removed and obtain permits for electrical work already completed; 90 days to remove outdoor storage and construction materials; and 180 days to bring the buildings structurally into compliance or remove; and removal of “to the satisfaction” subjectivity language.

Discussion ensued regarding removal of the subjectivity language. Fire Marshal Gray indicated that the Building Inspector and Fire Marshal were experts in dealing with the codes, applying them fairly and equally.

Commissioner Khatibi suggested leaving the subjectivity language.

Chairman Nichols called for a vote on the motion on the floor; motion carried as stated. Khosrowabadi absent.

PC-13-17 – Approval of Minutes of May 1, 2013 and May 15, 2013

Motion by Khatibi, seconded by Rojas and carried to approve the minutes of May 1, 2013 as presented. Khosrowabadi absent.

Motion by Rojas, seconded by Palmieri and carried to approve the minutes of May 15, 2013 as presented. Khosrowabadi absent.

REPORTS BY PLANNING COMMISSIONERS

None.

REPORTS BY STAFF

Assistant City Manager Bolowich introduced the newly hired Code Compliance/Animal Control Officer Gilbert Garza.

The meeting adjourned at 10:00 p.m.

Minutes approved at the meeting of August 7, 2013.



Barbara Nicholson
Deputy City Clerk